IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 18693 of 2005(A)

PETITIONER:

K.N. RADHACHANDRAN,
KOTTAMADATHIL HOUSE, ELAVUMTHITTA P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA,
REPRSENTED BY THE SECRETARY TO GOVERNMENT,
FOREST DEPARTMENT, THIRUVANANTHAPURAM.

2. TAHSILDAR,
REVENUE RECOVERY, PATHANAMTHITTA.

3. CHIEF FOREST COMSERVATOR,
OFFICE OF CHIEF FOREST CONSERVATOR,
THIRUVANANTHAPURAM.

4. D.F.O., RANNY.

BY GOVERNMENT PLEADER SRI. P. RAVINDRA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE AUCTION NOTICE NO. B7-445/2001 ISSUED BY THE 2ND RESPONDENT.

EXT.P2 COPY OF THE CHALAN ISSUED BY DFO RANNY UNDER REFERENCE A2-2553/98

EXT.P3 COPY OF THE OBJECTION GIVEN BY THE PETITIONER TO 3RD RESPONDENT DATED 7.5.1999

EXT.P4 COPY OF THE JUDGMENT IN WPC 15966 OF 2004

EXT.P5 COPY OF THE ARGUMENT NOTE SUBMITTED BY PETITIONER TO THIRD RESPONDENT.

EXT.P6 COPY OF THE ORDER DATED 21.10.2004

EXT.P7 COPY OF THE APPEAL MEMORANDUM FILED AGAINST EXT.P6

EXT.P8 COPY OF RECEIPT DATED 18.7.2005.

EXT.P9 COPY OF THE LETTER DATED 17.8.2005 ISSUED BY FIRST RESPONDENT.

EXT.P10 COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER ALONG WITH THE ORDER.

EXT.P11COPY OF RECEIPT DATED 15.6.2006 ACKNOWLEDGING RECEIPT OF RS. 38,343/-..

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 18693 OF 2005

Dated this the 14th day of December, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of Rs. 1,70,499/- towards loss sustained by the forest department on account of petitioner's failure to pay for the timber purchased by him and failure to lift the materials thereafter. It is seen that several lots were sold to the petitioner on 28.10.1996, 30.10.1996, and 19.6.1997. Petitioner paid for part of the lots and lifted some materials. However, substantial quantity was not lifted by him which led to resale thereafter at the risk and cost of the petitioner. Even though petitioner has put up a case that he could not lift the balance lots for shortage as against quantity declared and sold by the forest department, I find no bona fide in this contention because on enquiry, the Chief Conservator of Forests vide Ext.P6 held that petitioner's allegations were without any basis. Moreover, the very same quantity abandoned by the petitioner was reauctioned and was paid for and lifted by other bidders without any complaint about the shortage of quantity. Further, it is seen that

petitioner repeatedly applied for extension of time for payment of sale price which obviously means that petitioner had no complaint about the quantity or quality even after purchase of the same. Therefore this contention of the petitioner is rightly rejected by the respondents.

2. Counsel for the petitioner, however, referred to the finding of Chief Conservator of Forests in Ext.P6 that the sale price of very same goods was higher than the price at which it was sold to the petitioner. Of course, higher sale price received on resale over the price at which it was sold to the petitioner is not stated by the respondents. It is seen from Ext.P2 that the demand raised from the petitioner is mainly towards interest on the ground of extension of time applied for by the petitioner and granted to the petitioner, which led to belated re-sale of the goods. Counsel for the petitioner also pointed out that interest charged is exhorbitant rate for the various periods. If the differential price received is excess over the price at which the goods were sold to the petitioner, and if such amount is in excess of the interest and other claims from the petitioner vide Ext.P2, then there is no justification for demanding compensation from the petitioner as State has not suffered any loss. It is also not stated by respondents whether tender conditions

provide for interest at the rate of 48% for belated payment. I do not think demand of interest at 48% is justified unless tender conditions or terms of sale provide for the same. Petitioner is stated to have paid one-third of the demand under interim orders of this court. Since differential sale price received from the purchasers is not on record, W.P. is disposed of directing the third respondent to examine the matter afresh and recompute the petitioner's liability after informing him about the details of sale proceeds received for the very same goods when sold later. Third respondent is directed to take a decision within a period of one month from the date of receipt of a copy of this judgment. Petitioner will produce a copy of this judgment before the third respondent for compliance. If the petitioner has paid one-third of the amount due under interim orders of this court, then recovery of the balance two-thirds will remain stayed for five months from now and thereafter recovery will be based on fresh orders to be issued by the third respondent.

(C.N. RAMACHANDRAN NAIR)
Judge